

SERVICE DATE - LATE RELEASE MAY 4, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34479

ARKANSAS MIDLAND RAILROAD COMPANY, INC.-ALTERNATIVE RAIL SERVICE-
LINE OF DELTA SOUTHERN RAILROAD, INC.

Decided: May 4, 2004

The Board is granting a request by Arkansas Midland Railroad Company (AKMD) for a 90-day extension of the emergency service authority issued in a decision served on March 19, 2004.

BACKGROUND

This proceeding began when AKMD filed a petition for emergency service authority pursuant to 49 U.S.C. 11123 and 49 CFR part 1146 to provide alternative rail service on a Union Pacific Railroad Company (UP)-owned line extending from milepost 422.32 in Dermott, AR, to milepost 461.74 at Warren, AR (Line), and to conduct interchange operations on UP's Dermott-McGehee line. The Line had been leased to the Delta Southern Railroad, Inc. (Delta). In a decision served on March 11, 2004, the Board stated that the petition would be granted unless, by March 18, 2004, Delta certified to the Board and all parties and shippers that it had taken all steps necessary and was fully serving all customers on the Line. Subsequently, Delta filed a letter stating that it was withdrawing its objection to the emergency service authority requested by AKMD, and would "be voluntarily terminating its operations over the subject line so that UP can transfer operations to the [AKMD] . . ." In a decision served on March 19, 2004, the Board granted AKMD's petition and authorized it to perform service on the Line for 30 days once it certified that the Line had been repaired and could be operated safely. On April 2, 2004, AKMD provided the certification and indicated it intended to begin service on April 6, 2004. It actually began the rail service on April 5, 2004.

In a petition filed April 14, 2004, AKMD seeks an extension of its service authority for a period of 90 days or until August 2, 2004, whichever is longer.¹ Because AKMD began operations on April 5, 2004, the 90-day extension would run from May 5, 2004, to August 3, 2004.

¹ AKMD notes that there may be some question as to whether its current service authority ends 30 days: from the March 19th decision; from AKMD's April 2, 2004 certification letter; or after AKMD began operations on the Line on April 5, 2004. The Board finds that the 30-day period ends on May 5, 2004, 30 days after operations began on the Line.

AKMD notes that Delta has voluntarily withdrawn from the Line and is not in a position to resume operations on it. While UP and AKMD have discussed a permanent lease or transfer of the Line to AKMD, the parties have concentrated on restoring rail service, and no agreement has been reached concerning future permanent arrangements. AKMD asserts that, in the absence of an extension, rail service on the Line would again shut down at the end of the 30-day period. UP and Potlatch Corporation (Potlatch), a shipper on the Line, support the requested extension.

DISCUSSION AND CONCLUSIONS

Unless otherwise indicated in the Board's order authorizing alternative rail service, the order establishes a rebuttable presumption that the transportation emergency will continue beyond the initial 30-day period. 49 CFR 1146.1(c). The evidence in this case confirms that the transportation emergency continues to exist and that a 90-day extension of the alternative rail service order is appropriate. This extension will provide the parties sufficient time to reach permanent arrangements for future operations on the Line, while in the interim preserving rail service to shippers. There has been no objection filed to the extension, and, as noted, UP and Potlatch support the request. Accordingly, AKMD will be authorized to perform alternative rail service on the Line and to conduct interchange operations on UP's Dermott-McGehee line until August 3, 2004.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. AKMD's petition for extension of its emergency service authority is granted, and AKMD is authorized to perform alternative rail service on the Line until August 3, 2004.
2. This decision is effective on its date of service.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary